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UNITED STATES DEPARTMENT OF AGRICULTURE

BULLETIN No. 541

Contribution from Bureau of Markets
CHARLES J. BRAND, Chief

Washington, D. C. ▼ March 23, 1918

COOPERATIVE ORGANIZATION BY-LAWS.

By C. E. Bassett, *Specialist in Cooperative Organization, and* O. B. Jesness, *Assistant in Cooperative Organization.*

CONTENTS.

	Page.
Importance of by-laws	1
Adaptation of by-laws to local needs	2
Importance and advantages of incorporation	2
Section 6 of the Clayton amendment	3
Dealing with nonmembers	5
Differences between the nonstock and stock form of organization	6
Financing and perpetuating nonstock organizations	7
Section 6 and existing organizations	10
Section 6 organizations and State incorporation laws	12
Section 6 and the State antitrust laws	12
Adopting the by-laws	12
Caution that the department's views of law are not conclusive	13
Suggested form of by-laws for a cooperative nonprofit marketing association, formed without capital stock	14
Suggested form of by-laws for a cooperative marketing association formed with capital stock	22

IMPORTANCE OF BY-LAWS.

The founders of every cooperative association should have a definite plan of action mapped out before the organization actively engages in business, as the lack of such a plan has resulted in the failure of many cooperative enterprises. The importance of the by-laws of a cooperative association is readily comprehended when it is realized that the purpose of the by-laws is to serve as a working plan for the organization. The relation of the by-laws to the organization resembles the relation of the specifications for a building to the finished structure. The blue prints furnish the builder with a graphic representation of the work to be done and this is supplemented by the necessary descriptive material, so that he knows before the building operations are commenced what each room is to be like and how the entire structure will appear when finished. Satisfactory results are not obtained when the plans furnished the builder are incomplete or inaccurate. A person about to erect a building does not obtain a photograph of a structure, the appearance of which pleases him, and expect the workmen to be able to build one like it with no other guide than this photograph. Organizations on the

other hand too often expect to obtain the desired results by merely providing a general set of by-laws, which do not go into the details of the form of organization or the method of conducting the business.

ADAPTATION OF THE BY-LAWS TO LOCAL NEEDS.

It is impossible to draw up a standard form of by-laws which will adequately meet the needs of all organizations, for certain features may be highly desirable for one organization and decidedly impracticable for another organization. Among the reasons for variation in the by-laws, the kind of business engaged in is important. Thus the regulations in the by-laws of a fruit-shipping association regarding the grading and packing of goods shipped are not applicable to the business of a creamery organization. Many other illustrations could be given.

Certain parts of the by-laws must be drawn to suit the form of organization. Thus an association with capital stock will have clauses relating to its stock, while a nonstock association must substitute other sections more particularly adapted to its form of organization. The size of organization also should be taken into consideration, because by-laws drawn to meet the needs of a small local association would have to be changed before they would suit a large organization. The general plan may be the same in both cases, but some of the details necessarily will differ. Thus, in a small organization with a selected membership, restrictions on the individual members may be observed, while in a large organization it would probably be impossible to enforce such restrictions.

Differences in the requirements of various locations must not be overlooked. Not only may the local conditions surrounding a cooperative creamery in Vermont differ from those of a similar plant in Texas, but the local conditions at one creamery may vary considerably from those at a plant only a few miles away. The questions of proximity to market, of competition, of the characteristics of the local population, and the kind of farming all must be considered.

The State law under which the organization is to be incorporated also influences the character of the by-laws. Some of the States have special laws providing for the formation of cooperative associations; in other States such associations are formed in accordance with the general incorporation laws. The State laws are far from uniform, and it is therefore important to ascertain the requirements of the laws of the State in which the association is being incorporated, in order that the by-laws may be drawn in accordance with the law.

IMPORTANCE AND ADVANTAGES OF INCORPORATION.

A cooperative association may be in the form of a voluntary unincorporated association or it may be incorporated under the laws of the State in which it is being formed, or those of some other State.

Associations of the former class are rather loosely organized and lack certain advantages which are gained by incorporation.

It is advisable for all organizations to incorporate, as this gives the organization a distinct legal status which can not be obtained otherwise. For instance, an unincorporated association is hampered in the matter of bringing suit as an organization, while the incorporated association is not subject to such disability. Another advantage of the incorporated over the unincorporated form is that, in the former, the individual liability of a member is fixed by statute and is usually limited to the amount which he has invested in its capital stock. In some States the unincorporated organization is considered a partnership. Where this is the case, the liability of the members is that of partners. In other States the unincorporated organization is regarded as an agent for its members. Where it is so held, the liability of the members is that of principals. Moreover, the incorporated association has a more definite form of organization than the unincorporated and the management thereof is placed in the hands of certain officers who can be required to account more strictly to the association. Among other advantages of incorporation may be included its value in providing an established business, the continued existence of which is assured more fully than that of the unincorporated. Incorporation usually prevents any dispute as to the ownership of the property held by the association.

The relation of the by-laws to the State incorporation laws has already been discussed, but it should be remembered that some of the States have more than one law for the incorporation of associations. In that event, it must be decided which law is the most desirable and the by-laws must be drawn accordingly. Articles of incorporation must be prepared before incorporation, but as the form of this procedure differs somewhat in the various States and the requirements can usually be ascertained from the Secretary of State or other official in charge of such matters, a suggested form for articles of incorporation is not included here.

SECTION 6 OF THE CLAYTON AMENDMENT.

In 1890 Congress passed the Sherman antitrust law, and in 1914 an amendment to the antitrust law, commonly known as the Clayton amendment, was passed. Section 6 of the Clayton Act is of particular interest to farmers' cooperative associations, because to a valuable extent it exempts such associations, provided they conform to its requirements, from the operation of the United States antitrust laws. Section 6 of the Clayton Act reads as follows:

> That the labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes

of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the antitrust laws.

It is obvious that if an association is to get the benefit of the section, it must comply with its requirements. It must be, first, a "labor, agricultural, or horticultural organization"; second, it must be "instituted for the purpose of mutual help"; third, it must be formed without "capital stock"; and, fourth, it must not be "conducted for profit."

As to the first requirement, there may be some difference of opinion regarding the membership of an agricultural or horticultural organization. Therefore it is safer that such an organization be composed only of persons engaged in or directly interested in farming. If it were not for this restriction it might be possible for a number of men engaged in some other line of business to organize, as an agricultural or horticultural organization, and claim the exemption provided by section 6 of the Clayton Act.

The second requirement provides that the organization shall be formed for mutual help; that is, it must be a cooperative association formed for the benefit of all its members and patrons and not of a few only. An organization formed or conducted with a different motive than for the purpose of mutual help can not come within the terms of the letter or the spirit of the section.

The third requirement is that the organization be formed without capital stock. Care must be taken to distinguish between the term "capital" and "capital stock." The qualification that an organization shall be without capital stock does not mean that it is not permitted to have any capital. Capital, or money needed to carry on the business, must be provided in some other way than by the issuance and sale of shares of stock. Capital stock is a common characteristic of the usual form of a profit-making corporation. The exclusion of capital stock serves further to differentiate organizations operating under section 6 from the ordinary profit-making corporation. It is obvious that the elimination of the capital stock feature removes much of the temptation to convert a cooperative organization into a profit-making enterprise.

The final requirement that the organization must not be conducted for profit, is in line with the second qualification, which provides that the organization shall be mutual. A distinction must be made between profits and savings. While under section 6 of the Clayton Act only such organizations as are not conducted for profit are given the benefits of the exemption from the operation of the United States antitrust laws, this does not mean that an organization meeting the requirements of this section is not permitted to effect

savings for its members. If the farmers, through cooperative collective bargaining, are able to effect economies in the matter of the sale and distribution of their products and the purchase of their supplies, to that extent each member is benefited by his proportion of the savings. If the organization takes out only what is necessary to cover the cost of operation and to provide adequate maintenance and reserve funds, and prorates the balance among the members and other patrons, in accordance with the amount of patronage which each has given the organization, it is believed that it is not being conducted for profit. In that case the so-called "patronage dividend" is only a refund to the member or patron of what the year's business experience has demonstrated to be an overcharge for services rendered the member. In this way the member makes savings only and the association never can make profit.

DEALING WITH NONMEMBERS.

If an organization handles the products of both members and nonmembers, and prorates any surplus it may accumulate among the members only, it is neither strictly mutual nor nonprofit and therefore does not measure up to the requirements of section 6. It follows that an organization transacting business with nonmember patrons must deal with such patrons on the same basis, with respect to its charges for services rendered and the distribution of savings effected, as it does with its members.

The test of mutuality and equality is to be found in the fact that the association does not charge the nonmember patron for services rendered to him more than the actual cost of such service, including his prorata part of all overhead expenses. This must be so, or otherwise a small group of farmers could organize an agricultural association, and, by doing a large business with nonmembers, make large profits for themselves. It is thus seen that section 6 makes it obligatory for every organization, desiring to secure its benefits, to treat all patrons alike, in the matter of charging for services rendered and distributing savings made.

The necessity for mutuality and equality, exacted by section 6, makes it highly desirable, if not obligatory, to have all patrons enrolled as members, as this removes any doubt which might otherwise exist as to whether or not the organization complies with the provisions of section 6. This presents a problem of some difficulty, for there may be instances where a nonmember desires to deal through an organization without becoming a member. The best way to meet the difficulty is to make it as easy as possible for anyone eligible to membership to unite with the organization. Then if such person does not want to become a member, it may be advisable for the association to refuse to act as his agent.

DIFFERENCES BETWEEN NONSTOCK AND STOCK FORMS OF ORGANIZATION.

The stock form of organization is the most common, but as this type does not meet the requirements of section 6 of the Clayton Act, added importance is given to the nonstock form, as far as agricultural associations are concerned. A fundamental difference between the two forms of organization is that, in one, stock must be purchased before a person is entitled to membership, while in the other it is customary to require a membership fee only.

In the stock form, there is no doubt about the financial interest of each member in the organization, while in nonstock organizations such interest can not always be so easily ascertained. When the necessary capital is secured exclusively by means of a membership fee, there is little difficulty in this particular; but if the money be obtained by levying assessments on the members in proportion to the business done for them by the association, it is impossible to know what each member's interest is unless complete records be kept.

The ordinary stock corporation distributes its profits in the shape of dividends on its shares of capital stock, while, in a truly cooperative organization having capital stock, any surplus to be divided is distributed, by first paying upon the capital stock a sum which represents a fair rate of interest on the money invested, and then dividing the balance in the form of what has been popularly called "patronage dividends," the latter distribution being based upon the amount of business transacted for the members by the organization. As a concrete illustration of these two methods, the following may be used: If a stock corporation with a capital of $5,000, divided into 50 shares of $100 each, does a business of $100,000 and accumulates a surplus of $1,000, above expenses and what is necessary for maintenance and reserve funds, a dividend of 20 per cent may be paid on each share; that is, every stockholder may receive $20 for each share he owns. If this organization operates on the cooperative plan, it will pay a dividend which is equivalent to a fair rate of interest, say 6 per cent, on the capital invested in its stock, amounting to $6 per share, or a total of $300 in the form of interest, and then distribute the remaining $700 in the form of so-called "patronage dividends," amounting to 70 cents on every $100 of patronage. Nonstock organizations formed in accordance with the requirements of section 6 should distribute savings on a ratable basis of patronage.

Another common difference between the ordinary stock form and the nonstock form of organization relates to the voting power of the members. In the former it is customary to allow each member to vote according to the number of his shares, while in the latter all members have the same voting power. However, it should be

stated that truly cooperative organizations having capital stock now generally allow each member one vote only, regardless of the number of shares he may own.

FINANCING AND PERPETUATING NONSTOCK ORGANIZATIONS.

One advantage of the stock form of organization is that the sale of the shares provides the required capital. A nonstock organization must provide whatever capital it requires in some other way. Where only a nominal sum is necessary, this may be secured by means of a membership fee. If any considerable amount is required, that method may not prove feasible, because a large membership fee may make it difficult to secure members. Where a greater amount of capital than can be obtained from membership fees is required, it will have to be borrowed either from the members of the association or from an outsider. When it is desired to secure all of the capital from the members, the organization can make it a membership requirement for each member to loan the association a certain amount, or it may rely on loans being made voluntarily by members. One advantage of requiring all members to participate in such loans is that it creates a vital interest among them in the success of their organization, as they become directly concerned in its financial affairs. Moreover, reliance upon loans made voluntarily by the members necessarily introduces an element of uncertainty. This would be diminished or removed if each member assumed a fixed obligation to contribute his share of capital when called on. Where the money is borrowed outside of the membership, some security for the loans is usually required. In such case a joint note of the members or individual notes of the members may furnish the necessary security. The latter method is preferable, because it limits the liability of each person to the amount of his note.

When a supply of money is required for only a short period, as during crop-moving times, the plan of having each member give the association a negotiable, promissory, demand note for a certain sum and then using the notes as collateral in obtaining loans, has been employed with success. These notes may be used for three years, and at the end of that period, when the member's patronage of the association may have increased or diminished, new notes may be taken for a respectively larger or smaller amount and the old notes may be canceled. This is simply a method whereby the member loans a small portion of his credit to the association and does not actually pay out any money, unless the association should be unable to repay the loans thus secured. If the amounts of the notes are based on the amount of business likely to be transacted with the organization, each member will loan his credit in proportion to the use he expects to make of the organization. Obviously these notes

are not necessary in the case of organizations which are in a position to secure funds needed for short periods from other sources.

Whenever an organization borrows, provision must be made for paying interest and principal. In the case of short-time loans required to finance the organization during the marketing season, payment may be made from commissions deducted from the proceeds of sales of the products. Thus, in some lines of business considerable money is required during the rush season in order to make advances to the farmers for their products, as the association does not get the returns from the sale of the products until later. An organization operating on a safe margin should not experience any difficulty in meeting such obligations.

Similarly when loans are obtained to finance the erection of buildings, or the purchase of property, provisions for repayment should be made. Needs of this kind, however, can best be met in ways entirely different from those employed in supplying money for short periods. A method of obtaining money for such permanent purposes not infrequently followed by cooperative associations is to levy assessments on the members in proportion to the business done for them by the organization. Thus, in the case of a creamery organization, which borrowed the money necessary for building and equipping the plant, a special levy of 1 cent for each pound of butter fat handled was made in order to provide the money needed to repay the loan.

In case of a cooperative organization which secures from its own members the funds for making permanent improvements, it is sometimes argued that it is unnecessary to provide for repayment. There are strong reasons, however, for the association specifically to assume an obligation to return every contribution of this character. The membership of an association will gradually change, so that an organization which secured its capital from its original members, sometimes finds that many of the old members have dropped out and that new members, who have not contributed to the original expense of the association, have come in to take their places. On this account, unless some provision is made for the repayment of money obtained from the members, the time may come when all the members who have contributed will have withdrawn. Adequate provision, of course, should be made annually for depreciation in the value of the property.

Loans may be secured from members with the understanding that they will be repaid upon withdrawal from the association, or that they will be repaid at some stated time, or in installments.

One objection to allowing such loans to run until a member withdraws from the organization, is that there may be a number of withdrawals during one year and none during another year. Under these circumstances it is difficult to forecast how much money will be

necessary during any one year to repay retiring members. Another drawback to this method is that it results in an unequal financial interest of the members, as the remaining members will have to contribute to the amount due each withdrawing member, and, as a result the financial interest of the older members will be much greater than that of the newer members. Such an arrangement also would tend to put a premium on withdrawal from membership.

If each member is required to lend a certain amount to the association, such loans may be paid in annual installments, by levying an assessment on each member in proportion to the business conducted for him by the association, of sufficient size to provide the proper amount. When this is done each member should be given a statement at the end of each fiscal year, showing the amount he has contributed in this manner during the year. If arrangements be made to pay at the end of each year one-fifth of the original sums loaned to the association by each member, the entire amount will be paid in five years. The financial interest of all members in the association may be kept approximately equal by continuing the assessments and payments throughout the life of the association, so that, in fact, the loans are placed on a revolving basis. When this plan is followed, the amounts indicated on the yearly statement given to each member, after deducting the proper depreciation charge, will be paid five years from the time the statement is issued. Thus, the statements issued at the end of the first year will be taken up at the end of the sixth year, and so on. If it is desired, provisions can be made for the payment of interest on the money invested in this way. When this is done the assessments must be of sufficient size to take care of the interest as well as the principal.

As a concrete illustration of this plan, let it be assumed that a cooperative nonstock creamery association, composed of 100 members, requires $5,000 to erect and equip the creamery. Each member lends $50 to the association with the understanding that this amount will be repaid in annual installments so that the entire sum will be paid by the end of the fifth year, and that these loans are to receive 4 per cent interest per annum. A special assessment is levied on each pound of butter fat delivered to the creamery, of sufficient size to provide for the payment of the yearly installments on the loan, the interest, and also an additional amount to take care of depreciation. For this illustration, let it be assumed that 5 per cent per annum provides a sufficient reserve for depreciation. The total amount which will be provided annually by the special assessment then becomes $1,450. Of this amount, $1,000 is for the payment of the principal, $200 is for interest, and the remaining $250 is to provide a reserve fund for depreciation.

At the end of each year, each patron receives a statement or certificate of indebtedness which shows the amount he has contributed during the year, less his proportionate share of the interest and depreciation. In accordance with the plan previously outlined, these certificates will be taken up five years after they are issued. It will therefore be necessary to continue the special assessment for this purpose throughout the life of the association. In other words, $1,450 will be provided annually in this manner.

It is important that sufficient provision for the creation of an adequate reserve fund for depreciation be made. Unless this is done the face value of the outstanding certificates soon will be greater than the assets of the organization. Of course, if provision for a reserve fund for depreciation is made in connection with the general operating expense, a charge for this purpose should not be included as a part of the special assessment.

The payment of interest on the certificates is desirable because the patronage of each individual is likely to fluctuate from year to year so that a member's financial interest in the organization may not always be exactly in proportion to the use he makes of the organization. The payment of interest also will give retiring members a return on their investment as long as they continue to hold a financial interest in the association.

An objection that some may have to offer, to the revolving plan of financing a cooperative association, is that it requires a complicated system of bookkeeping. This objection is not serious for it must be remembered that the same records will be required in order to distribute the patronage refunds, and the only additional labor will be in connection with the issuance and redemption of the certificates of indebtedness.

For some classes of business and for some organizations this plan of financing may not prove practicable because of the effect it may have on the immediate returns to the farmer for his products. In such instances it may be advisable to extend the period of repaying the loans, or some other plan may be found more feasible. Thus, an organization may be incorporated for 20 years and loans be secured for this period. When the 20 years have elapsed, a reorganization will be necessary and the new organization will be incorporated for another 20 years if the business is to be continued. The old loans will be paid up and the new organization will obtain new loans. Adequate provision for depreciation should be made so that the organization will be in a position to pay up old loans in full when due. A fair rate of interest should be paid on such loans.

SECTION 6 AND EXISTING ORGANIZATIONS.

Associations which are already engaged in business and which are not formed in accordance with the provisions of section 6 of the

Clayton Act, will have to change their form of organization and the manner of conducting their business, if they desire to obtain the benefits of the exemption provided by that section. No hard and fast rules for making this change can be laid down, as the exact procedure depends largely on the laws of the State in which the organization is incorporated. The first step should be to ascertain whether or not the State laws provide for the incorporation of organizations formed in accordance with section 6. If so, the details of the manner of changing from the existing form should be ascertained. The by-laws, of course, will have to be changed to comply with the new form of organization. It is likely that in most instances the old organization will be dissolved and a new organization formed. If so, a new set of by-laws can readily be adopted.

The questions arising in connection with the transferring of the property from the old association to the new organization are likely to prove perplexing in many cases, especially where the old organization is formed on the capital-stock plan. There are various ways of adjusting this matter, and the best method will depend on the character of the organization and local conditions. A plan which may be followed where the value of each share of stock in the old organization is small and the shares are uniformly distributed among the members is to issue paid-up memberships in the new organization in exchange for the shares in the old and in this way eliminate the capital stock. Thus, if the value of a share in the old organization is $10 and each member has one share, the membership fee in the new organization can be placed at $10. If the value of a share in the old organization is $25 and the annual fee in the new association is placed at $5, each shareholder may be credited on his annual dues for five years. The difficulty lies in the fact that the shares of stock usually are not uniformly distributed. Thus, one member may have only 1 share and another member have 20 shares. In such a case the method outlined would prove impracticable. Should the membership in the new organization be considerably larger than the old, it may be possible with the receipts from the membership fees of new members to purchase from the old members the extra shares, at their actual cash value, and cancel them.

Where the property holdings are extensive and the capital stock is large, some other method of transferring the property is likely to prove more feasible. In some cases it may be found advisable not to dissolve the old organization, but to let that corporation continue as the owner of the property. The new organization can then lease the property from the old association, paying sufficient rental to provide for depreciation and a fair rate of interest on the investment. If so desired, the old association can be dissolved and the new association can purchase the property, when authorized as necessary for the conduct of its operations, paying for it on the installment plan.

Where two organizations are maintained, one in conformity with section 6 and the other in the form of a capital-stock organization, care should be taken to preserve the bona fide and absolute independence of the two organizations. Otherwise, under such circumstances there is danger that this plan might be held to be a subterfuge.

SECTION 6 ORGANIZATIONS AND STATE INCORPORATION LAWS.

Many of the State laws relating to the incorporation of associations do not provide for the form of organization which is required by section 6 of the Clayton Act. While a large number of States have special laws for the incorporation of cooperative associations, only a few of them provide for the incorporation of cooperative sales agencies without capital stock. It is not unlikely, however, that more of the States will enact appropriate incorporation laws in the near future.[1] It is possible to organize as a voluntary association—that is, without incorporation—but by so doing the organization loses the advantages to be gained from being incorporated.

SECTION 6 AND THE STATE ANTITRUST LAWS.

While section 6 of the Clayton Act confers exemptions upon organizations, which live up to its requirements, from the operation of the United States antitrust laws, it must be kept in mind that that act neither supersedes nor affects the antitrust laws of the various States. The United States antitrust laws deal with interstate and foreign commerce only, while the State laws regulate commerce exclusively within the State. It is essential for everyone contemplating the formation of an association, to secure information in regard to the State laws which have a bearing on the method of organization and operation.

ADOPTING THE BY-LAWS.

When the organization of a cooperative association is taken up, it is well to have several preliminary meetings at which the advisability of organizing and the best form of organization can be discussed. It is advisable to have an organization committee to consider and develop the plan of organization and method of operation suited to the needs of the community. This committee may also be of service in drawing up a set of by-laws for consideration. In this work the committee should avail itself of all the suggestions that can be obtained in regard to the form and contents of the by-laws. It is thought to be indispensable that this committee should have the benefit of competent legal advice in the performance of its duties, in order that there may be no question as to the legality of the con-

[1] Service and Regulatory Announcements No. 20 of the Office of Markets and Rural Organization, U. S. Department of Agriculture, suggests an appropriate State law for the incorporation of section 6 cooperative sales agencies.

templated organization and the methods to be employed in conducting its business. The committee should not forget that the by-laws ought to be a working plan for the organization and therefore should aim to include in them all points of importance. The local conditions are not exactly the same in any two places and therefore such conditions must be considered carefully in drafting the by-laws.

The by-laws prepared by the committee should be considered carefully by the members at a general meeting. At this meeting it is advisable that the by-laws first be read through without interruption or discussion, so that those present may get a general idea of the plan proposed, before taking up the various points in detail. After such reading, the by-laws should be considered very carefully. They should be taken up one section at a time, and ample opportunity should be given for discussion and for making any changes that may be desirable. After each section of an article has been discussed, it is best to vote on the question of adopting that article, before going on to the next. When each article has been considered and passed upon, the matter of voting on the adoption of the by-laws as a whole is merely formal.

The member who acts as chairman at the meeting should be a capable presiding officer in order to expedite matters, as the work of adopting the by-laws may prove long drawn out unless care is taken to see that the discussion is restricted to the vital point then under consideration. If the discussion is allowed to digress too much, not only does a lengthy meeting result, but it is more difficult for the members to keep their minds concentrated on the important points. On the other hand, care must be taken not to create a feeling that the by-laws are being rushed through, without allowing an opportunity for full and free discussion.

CAUTION THAT THE DEPARTMENT'S VIEWS OF LAW ARE NOT CONCLUSIVE.

Effort has been made to draw the accompanying by-laws in such form that they will be suitable for organizations desiring to comply with the provisions of section 6 of the Clayton Act. While effort has been made to shape each provision so that it may be in harmony with law, nevertheless, those who contemplate using the material should be cautioned of the necessity for care on their part also. The antitrust laws are not committed to this department for administration. It has no power to give an authoritative ruling as to their meaning. Indeed, the final interpretation of these statutes rests with the courts. It is suggested that those who desire to make use of these by-laws should act in reference to the matter upon the advice of competent counsel of their own choice.

SUGGESTED FORM OF BY-LAWS FOR A COOPERATIVE NONPROFIT MARKETING ASSOCIATION FORMED WITHOUT CAPITAL STOCK.

The following suggested form of by-laws provides for nonprofit agricultural associations, formed without capital stock. These by-laws should be regarded as merely suggestive and should be changed to meet the individual needs of the association.

The notes following some of the sections are merely explanatory and, of course, are to be omitted in the by-laws adopted by the organization.

BY LAWS OF THE [HERE INSERT NAME OF ASSOCIATION].

Article I.—Name.

Section 1. This Association shall be known as the [Monroe County Cooperative Fruit Association],[1] and shall be incorporated under the laws of the State of [New York]. Its principal office shall be located in the town of [Hilton, State of New York].

Note.—The name should indicate the territory covered and the class of products handled as for instance, the "Maine Potato Shippers' Exchange," "Richmond Egg Circle," etc. Some of the State cooperative laws provide that the word "cooperative" shall form part of the name of organizations incorporated thereunder. Practically all associations should be incorporated under the laws of the State in which they are located.

Article II.—Objects.

Section 1. The objects of this Association shall be to encourage better and more economical methods of production; to secure better results in grading, packing, marketing, and advertising the products of its members; to buy supplies in a cooperative way; to hire, buy, build, own, sell, and control such buildings and other real and personal property as may be needed in the conduct of its operations; to cultivate and develop the cooperative spirit in the community, and to perform any other work which may tend to the betterment of the members and the general benefit of the neighborhood.

Note.—Make the objects as definite as possible. It is also well to make them sufficiently broad in scope to cover any future efforts of the association. Care should be taken to state the objects so as to keep the activities within the limits of the power conferred by the statute under which the association is incorporated, as well as in harmony with the articles of association.

Article III.—Membership.

Section 1. Any [bona fide grower of farm products, in any territory tributary to the shipping points of this Association] may become a member of the Association by agreeing to comply with the requirements of these by-laws.

Sec. 2. Upon his entering into such an agreement and paying the membership fee, the Association shall issue a certificate of membership to the applicant. Such certificate of membership shall not be transferable.

Sec. 3. At any time that the Board of Directors determines that a member has ceased to be a bona fide grower of farm products, his membership shall be terminated and his membership certificate shall be canceled.

Note.—There may be conditions where it would be wise to limit membership to those who have been recommended by the Board of Directors or who have received a two-thirds vote of the members present at any meeting. In some localities there are persons who are continually finding fault with the way things are managed and such people make undesirable members. Organizations desiring to comply with the requirements of Section 6 of the Clayton amendment of the antitrust laws should be made up entirely of farmers.

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[1] All matter appearing in brackets is simply suggestive, and is to be altered to suit the best interests of each individual association.

Article IV.—Fiscal Year, Meetings.

Section 1. The fiscal year of the Association shall commence [January 1] and end on [the 31st of the following December].

Note.—Whenever possible, the fiscal year should end after the close of one season's business and before the opening of the next. Thus, a grain elevator usually has its fiscal year ending in spring or early summer when practically all of the work of handling the previous season's business has been finished.

Sec. 2. The annual meeting of the Association shall be held at the office of the Association, in the town of [Hilton, New York,] on the [second Monday in January] in each year, at [10 o'clock a. m.].

Note.—The annual meeting should be held as soon after the end of the fiscal year as will allow for the settlement of all accounts, the auditing of the books, and the preparation of the annual reports of the officers.

Sec. 3. Special meetings may be called at any time by the President. He shall call such meetings whenever [ten] members shall so request in writing.

Sec. 4. Notice of the annual meeting shall be mailed by the Secretary to each member at least [one week] previous to the date of the meeting, and such notice shall be published in a local newspaper not less than [one week] previous to the date of meeting. At least [five] days before the date of any special meeting the Secretary shall mail notice of such meeting to each member, which shall state the nature of the business to be transacted at such meeting.

Article V.—Quorum.

Section 1. [One-fifth] of the members in good standing shall constitute a quorum for the transaction of business at any meeting.

Note.—When the organization is small and compact, the proportion required for a quorum may be larger than in a large organization including considerable territory.

Article VI.—Directors and Officers.

Section 1. The Board of Directors of this Association shall consist of [seven] members, who shall be divided into three classes. After the adoption of these by-laws, the members shall elect from among themselves [three] directors of the first class for a term of one year, [two] directors of the second class for a term of two years, and [two] directors of the third class for a term of three years. At the expiration of the terms of the directors so elected their successors shall be elected in like manner for terms of three years. Directors shall hold office until their successors shall have been elected and qualified and shall enter upon the discharge of their duties.

Note.—In some States the corporation laws stipulate the number of directors and officers an association shall have. The plan of having each shipping station or district represented on the Board of Directors tends to avoid jealousies between the various districts, and strengthens the confidence of those attempting to cooperate. Some object to having a director hold office for more than one year, believing that the board might be so objectionable to the members that it would be desirable to elect an entirely new board at the annual meeting. However, there are many advantages in keeping some experienced directors on each board. In case the entire board should go contrary to the wishes of the members, the recall of each director could be effected under section 6 of this article.

Sec. 2. The Board of Directors shall meet within [ten] days after the first election, and after each annual election, and shall elect by ballot a President and a Vice President from among themselves, and a Secretary-Treasurer [or a Secretary and a Treasurer] who may or may not be a member of the Association. They shall also choose three auditors from the members, not Directors, officers, agents, or employees of the Association. Such officers and auditors shall hold office for one year or until their successors are duly elected and qualified.

Note.—Some organizations desire to have someone outside the membership act as secretary or treasurer, as for instance a local banker. When such an arrangement is desired, it should be provided for in the by-laws.

SEC. 3. Any vacancy in the Board of Directors shall be filled, for the unexpired terms, at any annual meeting, or at any special meeting called for the purpose, in the manner provided for the original election of directors.

SEC. 4. [Four] members of the Board of Directors shall constitute a quorum at any meeting of the Board of Directors.

SEC. 5. [The compensation, if any, of the Board of Directors and the officers shall be determined by the members of the Association at a regular or called meeting of the Association.]

SEC. 6. Any director or officer of the association may, for cause, at any annual meeting or at any special meeting called for the purpose, at which a majority of the members shall be present, be removed from office by vote of not less than two-thirds of the members present. Such director or officer shall be informed in writing of the charges at least [five] days before such meeting and at such meeting shall have an opportunity to be heard in person, by counsel, and by witnesses, in regard thereto.

NOTE.—In some cases, especially when the Board of Directors is large, it is desirable to have an executive committee. Such a committee can be made up of the officers and one or two other members of the Board.

ARTICLE VII.—DUTIES OF THE DIRECTORS.

SECTION 1. The Board of Directors shall manage the business and the affairs of the Association and make the necessary rules and regulations, not inconsistent with law or with these by-laws, for the management of the business and the guidance of the officers, employees, and agents of the Association.

SEC. 2. The Board of Directors may employ and dismiss for cause a Business Manager, and fix his compensation. He shall have charge of the business of the Association under the direction of the Board of Directors.

SEC. 3. The Board of Directors shall require the treasurer and all other officers, agents, and employees charged by the Association with responsibility for the custody of any of its funds or property to give bond with sufficient surety for the faithful performance of their official duties.

SEC. 4. The Board of Directors shall meet on the [first Saturday] of each month at the office of the Association in the town of [Hilton, New York]. Special meetings of the board shall be held upon call of the President or upon written request of [three] members of the board.

ARTICLE VIII.—DUTIES OF THE OFFICERS.

SECTION 1. The President shall—

(*a*) Preside over all meetings of the Association and of the Board of Directors.

(*b*) Sign as President, with the [Secretary-Treasurer], all checks, notes, deeds, and other instruments on behalf of the Association.

(*c*) Call special meetings of the Association and of the Board of Directors.

(*d*) Perform all acts and duties usually required of an executive and presiding officer.

SEC. 2. In the absence or disability of the President, the Vice President shall preside and perform the duties of the President.

SEC. 3. The [Secretary-Treasurer] shall—

(*a*) Keep a complete record of all meetings of the Association and of the Board of Directors.

(*b*) Sign as [Secretary-Treasurer], with the President, all checks, notes, deeds, and other instruments on behalf of the Association.

(*c*) Serve all notices required by law and by these by-laws.

(*d*) Receive and disburse all funds and be the custodian of all the property of the Association.

(*e*) Keep a complete record of all business of the Association and make a full report of all matters and business pertaining to this office to the members at their annual meeting and make all reports required by law.

(*f*) Perform such other duties as may be required of him by the Association or the Board of Directors.

NOTE.—When the offices of Secretary and Treasurer are separate, the duties of each should be given in separate sections.

ARTICLE IX.—DUTIES AND POWERS OF THE MANAGER.

SECTION 1. Under the direction of the Board of Directors, the manager shall employ and discharge all employees, agents, and laborers. He shall secure information as to crop and market conditions and furnish the same to the members on request. He shall encourage the production of the best varieties of products demanded by the trade. He shall, as may be required by the Board of Directors, conduct packing schools in order that growers may become trained in the best methods of grading, packing, and labeling their products. He shall have charge of the grading, packing, and inspection of all products handled by the Association and shall have control of the brands and labels and their use on such products, in accordance with the rules of the Association. Subject to the terms of the contracts made by the members with the Association for the marketing of their products, the order of the Board of Directors, and the by-laws and rules of the Association, the manager shall have entire charge of of the sale and marketing of such products.

NOTE.—The manager is the most important officer and his power must be limited as little as possible. He can not be held responsible if he is to be dictated to at will by each member or if the officers are to meddle constantly with his work. This does not imply that the manager should be a dictator. He should take the suggestions of the officers and members and from them and his own experience he should construct a business plan. Whenever a manager loses the confidence of the members, he should be replaced with a manager who possesses that confidence. The duties of a manager differ with the different forms of organization and kinds of business. Therefore the duties here outlined must be considered as suggestive. Each association should redraft this provision to suit its purposes. Organizations like creameries and cheese factories may find it advisable to insert an article relating to the duties of the buttermaker or cheesemaker, as in such organizations the duties of the manager usually are more limited.

ARTICLE X.—MEMBERSHIP FEE AND FINANCE.

SECTION 1. Each member shall pay in advance to the Association a membership fee of [$5] and annual dues of [$1].

SEC. 2. At the time of uniting with this Association or at any time thereafter, when called upon by the Board of Directors, each member shall loan an amount to be fixed by the Board, not less than [$10] nor more than [$100] in cash to the Association to be used in building warehouses or other necessary buildings, and the lease or purchase of lands therefor, or in securing necessary equipment.

SEC. 3. Such loans shall draw interest at the rate of [4] per cent per annum.

SEC. 4. Such loans shall be repaid from a special fund created by levying a percentage assessment on the produce sold and supplies bought through the association, the amount of such percentage to be fixed by the Board of Directors, which amount shall be sufficient to pay [one-fifth] of the entire loan and the interest thereon in each year.

SEC. 5. At the end of each fiscal year each member shall receive a certificate showing the amount of money which he has contributed that year to the special loan fund levied on his produce and supplies. After the original loan has been paid in full, the special assessments shall continue and the holders of such certificates, out of the proceeds arising therefrom, shall be paid the amounts due thereon in the same manner and form as was the original loan, and this process of repayment shall continue during the life of the Association.

NOTE.—This article describes a method suggested for nonstock organizations in securing the necessary capital for the building of warehouses or the purchasing of equipment, inasmuch as no money is secured by the sale of shares of stock. In organizations where only a small outlay for equipment is required, the membership fee can be made sufficiently large to provide the necessary capital.

Article XI.—Emergency Capital.

Section 1. At the time of uniting with the Association, or at any time thereafter, when called upon by the Board of Directors, each member shall deliver to the Association a negotiable, promissory note, payable on demand, to the order of the Association. Such note shall be for the sum of [$25] and an additional [$1] for each acre of crops to be grown by the member, the products of which are to be marketed through the Association. But in no case shall this note be for a less sum than [$35].

Sec. 2. These notes shall be the property of the Association for the purpose of being pledged by the Board of Directors as collateral security for any loan that may be necessary in the conduct of the Association's business. Any member's note may also be available in the settlement of any liquidated damage that may result from the failure of said member to live up to his contract with the Association.

Note.—This article is intended to supply capital which is needed only for short periods, as, for instance, during the rush in crop-moving time and other periods when a supply of money is required. Organizations that have a surplus fund for such a purpose may not find it necessary to include this article in their by-laws. If any member knows that the association holds his note, which may be sold to settle any liquidated damage, caused by his breach of contract, it probably will cause him to be more careful about living up to that contract.

Article XII.—Grading and Inspecting.

Section 1. All products grown by the members for sale through the Association shall either be graded and packed on the grower's premises, in accordance with the rules of the association, subject to such inspection as may be established by the Board of Directors, or shall be delivered to the Association, as directed by the manager, in prime condition for grading, packing, and shipping.

Sec. 2. All produce offered for shipment shall be inspected before shipment. If any produce is not in good condition for shipping, such produce shall be sorted, and prepared for shipment at the expense of the owner.

Sec. 3. All brands, labels, and trade-marks established by the Association shall be registered and become its property, and they shall be attached only to such grades as shall be ordered by the Board of Directors.

Note.—The rules for grading and inspection will necessarily depend on the organization and the kind of business engaged in, and this should be kept in mind when drawing up the by-laws.

Article XIII.—Contracts and Agreements.

Section 1. Every member of this Association shall enter into a contract with the Association in the form required by the Board of Directors, subject to the following provisions:

(*a*) That the member, by said contract, appoints the [Monroe County Cooperative Fruit Association] his sales agent to sell all products grown by him for sale, or such part thereof as shall be satisfactory to the Board of Directors, as shall be specified in the contract, and binds himself to deliver such products to the [Monroe County Cooperative Fruit Association] for sale at such time and place as the Association directs.

(*b*) That said contract shall run continuously unless canceled by the member on [March 1] of any year by giving written notice to the Association at least [thirty] days prior to said date that he desires to cancel his contract, subject to any indebtedness due from him to the Association and delivering his copy of the contract to the Association on or before the [first day of March].

Note.—No cooperative association should attempt to do business without first having made a definite contract with each member. The manager can not be expected to work to advantage, unless he has definite knowledge of how much of the various kinds of products he is expected to market, and this knowledge should be in his possession early in the season. Unless a member is willing to bind himself under an enforceable contract, he can not expect his association to transact business to his advantage.

ARTICLE XIV.—DUTIES AND RIGHTS OF MEMBERS.

SECTION 1. A member shall have the right to give away or retain for his own use such of his farm products as he may wish, but he shall not sell any product contracted to the Association to an outside party, except products offered to and rejected by the Association.

SEC. 2. In case any member is offered a price in excess of the price then obtainable by the Association, said member shall turn over said offer to the Association for filling from said grower's goods.

NOTE.—This provision is necessary to prevent an outside disgruntled dealer from making a false offer, to test a member's loyalty and arouse dissension, with the idea of disrupting the organization. Allowing the organization to handle this offer compels the mischief-maker to make good on his offer; the grower gets the boosted price, if the dealer does not back down, and the organization handles the deal, and so is strengthened rather than injured. One or two such experiences have usually discouraged this very common form of outside interference.

SEC. 3. Each member shall have a number or mark which shall be permanently stamped on every sack, box, barrel, crate, basket, or other package packed by him or under his direction, for shipment through the Association. Any loss occasioned by improper packing or grading shall be charged to the member whose mark is found on said package.

SEC. 4. Products packed on the grower's premises shall be inspected as they are being packed by an Association inspector. He may be employed and paid by the grower to assist in packing, but he shall be held accountable alone to the Association for his inspection work. His own private mark shall be placed upon each package he packs or inspects and he shall be held jointly responsible with the grower for the pack as it may be disclosed in the final market, ordinary deterioration excepted.

SEC. 5. On or before [April 1] of each year each member shall report to the Association the acreage of products to be grown by him that year and the acreage the products of which he promises to market through the Association. During the growing season, each member shall furnish such information, concerning the crops pledged to the Association, as may be requested by the manager.

NOTE.—This section is intended for organizations handling perishable products such as fruit and vegetables, where it is important to know the volume of business to be handled.

SEC. 6. Each member of the Association shall have only one vote. This shall not be exercised except when all debts and dues owed by him to the Association have been fully paid. Voting by proxy shall not be permitted. Except in case of the removal of a director or officer, as provided in Article VI, section 6, of these by-laws, absent members may vote on specific questions by ballots transmitted to the Secretary of the Association by registered mail, and such ballots shall be counted only in the meeting at the time at which such vote is taken.

NOTE.—In a stock company, which is organized to earn profits on the money invested in the business, a member votes in proportion to the number of shares he holds, but a true cooperative association is based on the individual member, a number of whom unite to do something in which they have a common interest. In the former, money controls; in the latter, men. While there may be cases where the voting power of the members may be made in proportion to the acreage of their products, it will generally be found that any attempt to vary the voting power of members will be unwise. The practice of allowing a member to collect the proxies of absent members and vote the same tends to give a single member powers in the association, which are too dangerous to be allowed.

In some of the largest nonprofit cooperative associations it has been felt that it was neither fair nor wise to demand that the large producing member should be held to the same vote as a small producing member, as their responsibility and liability are so unequal. In such a case the voting power of members may be proportioned according to the amount of their products or acreage handled through the Association.

SEC. 7. Any member may withdraw from the Association at any time between [the first day of January and the first day of the following March]; but such withdrawal

shall not affect any right or lien which the Association has against the retiring member or his property until his indebtedness to the Association is fully paid.

NOTE.—The time of withdrawal should be so fixed as to take effect some time between the close of one season's business and the opening of the next. To permit a member to withdraw during a busy marketing season will result in confusion and may seriously handicap the manager in filling his contracts.

SEC. 8. Any member having a grievance or complaint against the Association may appeal to the Board of Directors [or to the members at any regular or called meeting]. No member shall be suspended or expelled or deprived of the benefits of the Association without having charges preferred against him, reasonable notice thereof having been given and a hearing before the Board of Directors [or by the members at a regular or called meeting].

ARTICLE XV.—INDEBTEDNESS, MEMBERSHIP LIABILITY.

SECTION 1. The amount of indebtedness which may be incurred by or on behalf of this Association shall at no time exceed [$20,000].

SEC. 2. Each member shall be responsible for his per capita share of all contracts, debts, and engagements of the Association up to and including the maximum indebtedness prescribed in section 1 of this article; but if any member's share of such contracts, debts, and engagements shall prove to be uncollectible, each remaining member shall be responsible, as his additional liability, for such unpaid share or part thereof to an amount equal to such member's original liability. No member shall be liable to the Association for any contract, debt, or engagement arising out of any specific transaction between the Association and any member or members thereof in which he does not participate, unless and until the association shall have exhausted every legal recourse and failed to enforce satisfaction from the member or members participating therein. In all cases any member who, voluntarily or otherwise, contributes to the payment of the debt or obligation of another member or other members shall have an action, several or joint as he may elect, against such defaulting member or members for reimbursement.

NOTE.—Section 2 should be changed to agree with the requirements of the laws under which the organization is incorporated.

ARTICLE XVI.—EXPENSES AND PAYMENTS.

SECTION 1. The expenses of operating the Association shall be met by a percentage charge laid upon returns for produce sold or by a uniform fixed commission per package and by a percentage charge upon supplies purchased, the amount of such charge to be fixed by the Board of Directors.

SEC. 2. Except in cases provided for in Article XIV, section 2, in making sales, all produce of the same grade shall be paid for on the basis of the average price received during such periods as the Board of Directors from time to time may determine. Payments for such produce shall be made to the shippers at the end of each period; in all other cases, payment shall be made to the shippers on the receipt by the Association of the returns for the sale of the produce.

NOTE.—It is important that prices should be averaged on products of the same grade, in order to deal with all members fairly. If prices are not averaged, one man may receive a higher price than his neighbor for shipments of the same quality made on the same day, and this would create dissatisfaction and distrust among the members.

ARTICLE XVII.—COOPERATIVE PURCHASE OF SUPPLIES.

SECTION 1. All merchandise purchased by the Association for any member shall be paid for in cash by the member ordering such supplies at the time of ordering the same, or the proper credit arranged for with some bank, approved by the Board of Directors, at the time of ordering.

NOTE.—Without such a provision an organization purchasing supplies for its members may find that some of the members will refuse to take supplies ordered or else will not pay promptly. A cooperative organization should extend credit to no one, unless it is amply secured.

SEC. 2. In case there are local dealers handling the supplies desired, they shall be given an opportunity to bid on the order before it is placed with an outside agency.

NOTE.—In the cooperative plan of buying farm supplies, the local dealer should be considered. The merchant who in the past has extended credit and rendered other valuable services should be favored when there is cash to be expended. The cooperative committee should go to such local firms and explain that their members are in condition to perform certain services which formerly were rendered by the dealers, and, in view of their less exacting requirements, they expect to save to themselves the price formerly charged for that work.

ARTICLE XVIII.—SAVINGS AND DAMAGES.

SECTION 1. After the season's expenses are paid and a proper sum set aside to cover the depreciation of the Association's property and after provision is made for a contingent fund to be fixed by the Board of Directors, the balance of the season's savings on products sold shall be divided among members and nonmember patrons, if any, in proportion to the amount [or value] of their products sold, and the balance of the season's savings on supplies purchased shall be divided in like manner. In case of a nonmember patron, any part of such sums of money owing him as such, may be applied to the payment of membership fees and dues for him, and, if so applied, when such fees and dues are fully paid a membership certificate shall be issued to him. When any nonmember offers his product and the Association accepts it for sale, such offer and acceptance shall be deemed an application for membership.

SEC. 2. Any member who fails to live up to his agreement, or fails or refuses to deliver to the Association for sale the pledged products, shall pay to the Association, as liquidated damages, the sum of [25 cents] for each [barrel of apples] not delivered by him; said sum may be deducted from any money in the possession of the Association due the member. Any such claim shall be a lien upon the member's loan note.

NOTE.—Some State courts have held that a stipulation for liquidated damage was void in the contract between the member and the Association, because it appeared that it was employed as a mere device to enforce a contract which was made in restraint of trade. These decisions were rendered prior to the passage of the Clayton amendment to the United States antitrust laws. It is now thought that State legislatures may authorize cooperative agricultural associations, which conform to the requirements of section 6 of the Clayton amendment, to embody in their contracts with their members a stipulation for liquidated damages, which will not offend the antitrust laws of the State or of the United States.

Many organizations have failed because members were bound only by a verbal agreement, which is totally inadequate for a stable and enduring organization. The laws of the State should be studied to ascertain whether this clause in the by-laws for holding the members may be legally included.

ARTICLE XIX.—ACCOUNTS AND AUDITING.

SECTION 1. This Association shall install a standard system of accounts, and provide other accounting appurtenances that may be necessary to conduct the business in a safe and orderly manner.

NOTE.—The Bureau of Markets has devised systems of accounts for several lines of cooperative business, such as grain elevators, fruit organizations, creameries, live stock shipping associations, and stores. Information in regard to systems of accounts may be obtained by writing to the Bureau of Markets, United States Department of Agriculture.

SEC. 2. The books and the business of the Association shall be audited [quarterly] by the auditors selected from the membership. A complete annual audit shall be made by a competent accountant previous to the date of each annual meeting, at which meeting his report shall be presented in full. Special audits shall be made upon order of the Board of Directors or upon a majority vote of the members at any regular or called meeting.

SEC. 3. The Association shall endeavor to cooperate with other farmers' cooperative associations in this locality in securing the services of a competent accountant for its annual audit.

NOTE.—While small associations may not feel the need of such a strict system of investigating their accounts, it will pay to have this work done often and most thoroughly. If the Association business is being conducted carelessly, frequent audits will make it known and better methods may be adopted before any great loss occurs. The cost of employing an expert accountant is more than balanced by the confidence which it gives the members and the effectual way in which it stops the criticism of fault finders.

ARTICLE XX.—AMENDMENTS.

SECTION 1. These by-laws may be amended at any meeting by a two-thirds vote of the members present, provided, that notice of such proposed amendment is included in the call for said meeting.

SUGGESTED FORM OF BY-LAWS FOR A COOPERATIVE MARKETING ASSOCIATION FORMED WITH CAPITAL STOCK.

Organizations which are formed with capital stock should replace Articles III, X, XV, and XVIII of the suggested by-laws for organizations without capital stock with the following articles:

ARTICLE III.—MEMBERSHIP.

SECTION 1. Any [bona fide grower of farm products in any territory tributary to the shipping points of this Association] may become a member of the Association by agreeing to comply with the requirements of these by-laws and purchasing at least [one] share of capital stock.

NOTE.—See note following Article III of the by-laws for organizations without capital stock.

ARTICLE X.—CAPITAL STOCK.

SECTION 1. The capital stock of this Association shall be [$5,000], divided into [500] shares of [$10] each. No member shall hold more than [10] per cent of the capital stock of the Association.

NOTE.—The amount of capital stock should be large enough to finance the organization adequately. When fixing the share value, the importance of a large membership should not be overlooked and the value should be such that a large number will purchase shares. On the other hand, the share value must not be placed at so low a figure that the organization will not be financed adequately.

SEC. 2. Transfers of shares shall be made upon the books of the Association only when the stockholder is free from indebtedness to the Association.

SEC. 3. A stockholder desiring to dispose of his shares of stock must first offer them to the Association through the Board of Directors, at market value.

NOTE.—This provision, if desired, must be provided for in the Articles of Incorporation to make it legal. To allow outsiders to purchase Association stock may result in the transfer of the control of the organization to those who are opposed to its continuance. If the Association does not purchase stock offered for sale or find a purchaser for it, the owner can not be prevented from selling it to anyone he may choose.

ARTICLE XIII.—CONTRACTS AND AGREEMENTS.

NOTE.—In the case of a capital stock organization or one which is in any sense a profit-making organization, the contract made between it and its member, relating to the sale of his products, should provide in express terms that the member retains the right to fix the price at which his products shall be sold and to sell his products to an outsider at such price as he may determine upon, provided the sale is made through the Association.

ARTICLE XV.—INDEBTEDNESS.

SECTION 1. The amount of indebtedness which may be incurred by or on behalf of this Association shall at no time exceed [$20,000].

ARTICLE XVIII.—REFUNDS AND DAMAGES.

SECTION 1. After the season's expenses are paid and the proper sum set aside to cover the depreciation of the Association's property, the balance of the season's surplus shall be divided as follows:

(*a*) The stockholders shall receive not to exceed [6] per cent per annum on the par value of their stock.

(*b*) One-half of the balance, if any, shall be set aside as a surplus fund to increase the working capital or to finance future improvements until such fund shall equal at least [25] per cent of the paid-up capital.

(*c*) The remainder, if any, shall be divided so that the distribution to nonmembers, if any, shall be at one-half the rate paid to members and that part of such remainder derived from sales of products shall be divided in proportion to the amount [or value] of the products of members and nonmembers sold and that part of such remainder derived from purchases of supplies shall be divided in like manner.

SEC. 2. [Same as section 2 for Article XVIII for nonstock organizations.]

NOTE.—Some of the States have laws which provide specifically the manner of apportioning the earnings, and it is therefore important to ascertain the requirements of the law in the State where the association is being incorporated in order that this article may be drawn in conformity therewith. In States where it is permissible to pay patronage dividends to nonmembers, some organizations have adopted the plan of paying patronage dividends to nonmembers at one-half the rate to members and crediting this to the account of the nonmember as payment on a share of stock. When this amount equals the value of a share the nonmember becomes a member.

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